



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 5234-98

3 May 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy on 7 March 1990. At that time you had completed about three years and eleven months of active and reserve service on prior enlistments. The record shows that on 12 September 1993 you were counseled following an alcohol related incident, two instances of missing muster and failure to pay a bar bill. In connection with this counseling, you were referred to the counseling and assistance center (CAAC) for evaluation. As part of that evaluation, you were required to provide a urine sample. The subsequent urinalysis tested positive for amphetamines and methamphetamines. The record shows that you were returned to the United States from the Philippines because of the revocation of your security clearance and enlisted classification codes.

On 4 January 1992 you filed a complaint of wrongs contending, in effect, that the command was improperly refusing to allow you to present your case to a court-martial. In addition, you contended that the decision to transfer you to the United States would prevent Philippine nationals from testifying at an administrative discharge board. In his response to your complaint of wrongs, the Commander, Naval Special Warfare Unit ONE pointed out that

separation processing was required for individuals who tested positive for drugs. The command also noted that you were not entitled to an administrative discharge board because you were not being recommended for discharge under other than honorable conditions and you had not completed six years of active or reserve service. Your request to remain in the Philippines was denied.

On 6 February 1992 you were notified of separation processing due to drug abuse. The record shows that you objected to discharge and submitted a statement. In the statement, you again requested an opportunity to present your case to an administrative discharge board. You included a statement from a Philippine national to the effect that one of her friends had put something in your drink.

On 9 April 1992 the discharge authority directed that you receive the type of discharge warranted by your service record. This characterization was directed because the urinalysis conducted by CAAC was considered to be command directed. Such urinalysis may be used for discharge processing but not to characterize service. On 21 April 1992 you were honorably discharged by reason of misconduct due to drug abuse. At that time you were not recommended for reenlistment and were assigned an RE-4 reenlistment code. The record shows that you had completed six years of active service as of the date of your discharge.

In your application you request a change in the reason for your discharge and reenlistment code. You contend that you were improperly denied your right to defend yourself at a court-martial and should have been allowed an administrative discharge board because you had completed six years of active service. You also contend that you have been a good citizen since discharge and have completed a nursing program.

In reaching its decision the Board found that at the time you were notified of discharge processing on 6 February 1992 you had not completed six years of active or reserve service and, therefore, were not eligible to have your case heard by an administrative discharge board. You would have been entitled to such board only if you had been recommended for a discharge under other than honorable conditions, or had six years of active and/or reserve service at the time separation action was initiated. The Board concluded that you were properly discharged by reason of misconduct due to drug abuse.

The Board was aware that regulations require the assignment of an RE-4 reenlistment code when an individual is discharged by reason of misconduct. Since you have been treated no differently than others discharged for that reason, the Board could not find an error or injustice in the assignment of the RE-4 reenlistment

code.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director